

FILED IN CHAMBERS

FEB 28 2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

PORFIRIO AYALA-CASTANEDA, : MOTION TO VACATE
 BOP No. 60695-019, : 28 U.S.C. § 2255
 Movant, :
 v. : CIVIL ACTION NO.
 : 1:12-CV-1757-ODE
 :
 UNITED STATES OF AMERICA, : CRIMINAL ACTION NO.
 Respondent. : 1:09-CR-64-1-ODE

ORDER

This matter is before the Court on Porfirio Ayala-Castaneda's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody [Doc. 157], Magistrate Judge E. Clayton Scofield III's Final Report and Recommendation recommending denial of that motion ("Final R&R") [Doc. 158], Ayala-Castaneda's Motion for Leave to Supplement His 28 U.S.C. § 2255 Filed in This District Court [Doc. 159], Ayala-Castaneda's Motion for a Time Extention [sic] to Prepare the Needed Response Brief to the Magistrate's Report and [R]ecommendation [Doc. 160], and Ayala-Castaneda's Objections to the Report & Recommendation of the United State Magistrate Judge [Doc. 162]. Ayala-Castaneda's motion to supplement his § 2255 motion and his motion for an extension of time to submit objections are **GRANTED nunc pro tunc**. For the reasons that follow, however, Magistrate Judge Scofield's Final R&R will be adopted and approved as the order of this Court (as

supplemented by this Order), Ayala-Castaneda's § 2255 motion will be denied, and no certificate of appealability will be issued.

A district judge has a duty to conduct a "careful and complete" review of a magistrate judge's Final R&R. Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982) (internal quotation marks and citation omitted). Those portions of the Final R&R that are not objected to need only be reviewed for clear error. Macort v. Prem, Inc., 208 F. App'x 781, 784 (11th Cir. 2006).¹ Where objections are made, a district judge "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made," 28 U.S.C. § 636(b)(1), and "give fresh consideration to those issues to which specific objection has been made," Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (internal quotation marks and citation omitted).

In short: Mr. Ayala-Castaneda rehashes the same arguments in his thirteen-page objections [Doc. No. 162] that he earlier made in his forty-page motion and brief [Doc. 157] and twelve-page

¹ Macort addressed only the standard of review applied to a magistrate judge's factual findings; however, the Supreme Court has held that there is no reason for the district court to apply a different standard of review to a magistrate judge's legal conclusions. Thomas v. Arn, 474 U.S. 140, 150 (1985). Thus, district courts in this circuit have routinely applied a clear-error standard to both. See Tauber v. Barnhart, 438 F. Supp. 2d 1366, 1373-74 (N.D. Ga. 2006) (collecting cases).

supplement [Doc. 159]. Those arguments are already addressed in the Final R&R, and Ayala-Castaneda has identified no factual or legal errors in the Final R&R. Having reviewed de novo all of those portions of the Final R&R to which Ayala-Castaneda raised specific objections, the Court finds that Magistrate Judge Scofield's factual and legal conclusions were correct with respect to the issues that Ayala-Castaneda raised in his § 2255 motion, as supplemented, and that Ayala-Castaneda's objections should be overruled.

The Final R&R [Doc. 158] is hereby **APPROVED AND ADOPTED** as the Order of this Court. Ayala-Castaneda's § 2255 motion is **DENIED**.

Because Ayala-Castaneda has not demonstrated that he has been denied a constitutional right or that the issue is reasonably debatable, a certificate of appealability is **DENIED**.

SO ORDERED, this 27 day of February, 2013.



ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE